IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WALTER JAMES HOVATTER	:	
v.	:	Civil No. CCB-03-2904
LOGAN WIDDOWSON, et al.	:	

MEMORANDUM

Now pending before this court are motions to dismiss, or in the alternative for summary judgment, filed by the defendants, which the plaintiff opposes. The issues in these motions have been fully briefed and no hearing is necessary. See Local Rule 105.6. For the reasons stated below, the motions to dismiss will be granted in part and denied in part.

BACKGROUND

On March 13, 1990, Charles Payne, Jr. was shot and killed at his home in Princess Anne, Maryland. Payne's wife, Deborah Payne, subsequently admitted to the police that she had discussed with her cousin, Kirk Jenkins, on numerous occasions, the idea of paying a third party to kill her husband. She also told police that in April 1990 Jenkins told her he had in fact paid someone to kill her husband.

Around 1993, the investigation into Payne's murder began to focus on the plaintiff, Walter Hovatter ("Hovatter"), as the third party who had been paid to murder Payne. Hovatter claims that suspicion turned on him only after the murder investigation was assigned to defendant Corporal George Jacobs ("Jacobs"), a Maryland State Police officer. (Compl. at ¶ 23.) According to Hovatter's

complaint, Jacobs conducted an intentionally misleading investigation by falsifying witness statements, making intentional misstatements of fact, and ignoring evidence that exculpated Hovatter and implicated other suspects. (Id. at ¶¶ 25, 28.) Hovatter alleges that Jacobs made numerous intentionally false, misleading, and inaccurate representations in the statement of probable cause which charged Hovatter with the Payne murder. (Id. at ¶¶ 29-31, 39-41.)

On April 29, 1994, Hovatter was charged by a criminal information filed in Somerset County, Maryland with first degree murder, conspiracy to commit murder, and the use of a handgun in the commission of a crime, and an arrest warrant was issued. Hovatter was arrested by Jacobs on May 2, 1994. At Hovatter's initial appearance later that day and at a bail review hearing the following day, he was determined to be ineligible for pretrial release and was ordered held without bail.[1] Hovatter's initial trial on the Payne murder charges resulted in a mistrial. His first retrial resulted in a conviction for first degree murder and conspiracy to commit murder, but this conviction was reversed by the Maryland Court of Special Appeals. Hovatter went through several more trials before he was acquitted of the Payne murder charges on October 26, 2000. Throughout this period, Hovatter remained in pretrial detention.

Defendants Martin Fisher ("Fisher") and Stephen Matthews ("Matthews"), identified as "law enforcement officers" employed by Wicomico County, are alleged to have worked with Jacobs during the Payne murder investigation, and obtained or manufactured false evidence implicating Hovatter. (Id. at ¶¶ 43-44.) Hovatter also states that Jacobs, Fisher, and Matthews testified falsely against him at his

[1] Hovatter then waived his right under Md. Code Ann., Crim. Proc. § 4-103 to a preliminary hearing.

trials. (Id. at ¶ 42, 44.) Logan Widdowson, the State's Attorney for Somerset County at the time, allegedly directed Jacobs in his investigation of the Payne murder and the drafting of the statement of probable cause. (Id. at ¶¶ 26-28.) The complaint also alleges that Widdowson sought out and instructed witnesses to testify falsely against Hovatter, and prosecuted Hovatter despite his knowledge that the charges were unsupported. (Id. at ¶¶ 45-48.) Finally, Hovatter alleges that Widdowson and defendant Hunter Nelms, Sheriff of Wicomico County, both made statements to the media after the acquittal stating that Hovatter was guilty. (Id. at ¶¶ 51-52.)

Hovatter filed this lawsuit on October 15, 2003. His amended complaint alleges claims against all of the defendants for malicious prosecution (count one), violations of the Fourth and Fourteenth Amendments, pursuant to 42 U.S.C. § 1983 (count two), false arrest and false imprisonment (counts three and four), violations of Articles 24 and 26 of the Maryland Declaration of Rights (count five), invasion of privacy - false light (count six), intentional infliction of emotional distress (count seven), and civil conspiracy (count eight).[2] The individual defendants all are sued in their individual capacities;

[2] The amended complaint drops the State of Maryland and Wicomico and Somerset Counties as defendants, and adds the Boards of Commissioners of Wicomico and Somerset Counties and John Doe, identified as the Sheriff's Deputy for Wicomico County. Hovatter makes no specific factual allegations regarding John Doe or the role that he played in the conduct alleged, other than to state that he served as the supervisory officer for defendants Fisher and Matthews. (Compl. at ¶ 11.) As to the Board of Commissioners of Somerset County, the only basis for imposing liability that emerges from the complaint is the conduct of Widdowson, who served as the State's Attorney for Somerset County. State's attorneys are state officials under Maryland law, however, such that Somerset County is not liable for his conduct. See Md. Const. art. V, §§ 7-12; Md. Code Ann., Art. 10 § 34 et seq.; Md. Code Ann., State Gov't § 12-101(a)(8). For these reasons, all claims against John Doe and the Board of Commissioners of Somerset County will be dismissed for failure to state a claim upon which relief can be granted.

Sheriff Hunter Nelms also is sued in his official capacity.[3]

ANALYSIS

Defendants Widdowson, Jacobs, Fisher, Matthews, and Nelms each have joined in two pending motions to dismiss, or in the alternative for summary judgment, based on the plaintiff's failure to state a claim upon which relief can be granted. A court considers only the pleadings when deciding a Rule 12(b)(6) motion. Where the parties present matters outside of the pleadings and the court considers those matters, the motion is treated as one for summary judgment. See Fed. R. Civ. P. 12(b); Gadsby by Gadsby v. Grasmick, 109 F.3d 940, 949 (4th Cir. 1997); Paukstis v. Kenwood Golf & Country Club, Inc., 241 F. Supp. 2d 551, 556 (D. Md. 2003). The parties, however, "shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(b). Although Hovatter has had more than adequate notice that the defendants' filings might be treated as motions for summary judgment, based on their alternative captions and attached materials, he expressly chose to treat them as motions to dismiss. Hovatter notes that no discovery has been conducted in this case to date and the defendants have presented very little evidence outside of the pleadings. I agree with Hovatter, and will treat the defendants' filings as motions to dismiss under Rule 12(b)(6).

"The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; importantly, a Rule 12(b)(6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999) (internal

---

[3] Hovatter has consented to the entry of judgment in favor of defendant Allen Handy. All claims against him will be dismissed.

quotation marks and alterations omitted). When ruling on such a motion, the court must "accept the well-pled allegations of the complaint as true," and "construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). Consequently, a motion to dismiss under Rule 12(b)(6) may be granted only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Edwards, 178 F.3d at 244. In addition, because the court is testing the legal sufficiency of the claims, the court is not bound by the plaintiff's legal conclusions. See, e.g., Young v. City of Mount Ranier, 238 F.3d 567, 577 (4th Cir. 2001) (noting that the "presence . . . of a few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6)" when the facts alleged do not support the legal conclusions); Labram v. Havel, 43 F.3d 918, 921 (4th Cir. 1995) (affirming Rule 12(b)(6) dismissal with prejudice because the plaintiff's alleged facts failed to support her conclusion that the defendant owed her a fiduciary duty at common law).

I. Federal Claim Under § 1983

Hovatter states that his § 1983 claim is based on the deprivation of his rights under the Fourth and Fourteenth Amendments "not to be subjected to false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, false light publicity, and conspiracy to commit these torts." (Compl. at ¶ 63.) Although I conclude that Hovatter has stated a § 1983 claim, the scope of that claim and the defendants who may be held liable are limited by a number of doctrines.

A. Absolute Immunity

The defendants argue that Hovatter's claims against Widdowson are barred by the doctrine of

absolute immunity. Relying on common law principles and policy considerations, the Supreme Court has held that prosecutors are entitled to absolute immunity "when serving as an advocate in judicial proceedings." Kalina v. Fletcher, 522 U.S. 118, 125 (1997). A prosecutor thus will enjoy absolute immunity for claims related to the presentation of evidence to a grand jury or a court, including knowingly presenting false or misleading evidence. See Burns v. Reed, 500 U.S. 478, 491-92 (1991); Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976); Lyles v. Sparks, 79 F.3d 372, 377 (4th Cir. 1996). Witnesses who testify in court, including police officers, also are absolutely immune from any claims relating to their testimony. See Briscoe v. LaHue, 460 U.S. 325, 326, 334 (1983); Lyles, 79 F.3d at 378. Accordingly, the doctrine of absolute immunity bars any claim against Widdowson relating to his pursuit and presentation of the state's case at Hovatter's trials, and any claim against Jacobs, Fisher, and Matthews relating to their testimony at his trials. (Compl. at ¶¶ 42, 44, 48-49.)

This absolute immunity does not extend, however, to a prosecutor's conduct when functioning as "an administrator or investigative officer," Kalina, 522 U.S. at 125 (quoting Imbler, 424 U.S. at 430-31), for example in holding a press conference or investigating a crime in the search for a suspect, prior to any finding of probable cause. See Buckley v. Fitzsimmons, 509 U.S. 259, 277-78 (1993); Goldstein v. Moatz, 364 F.3d 205, 214-15 (4th Cir. 2004). Specifically, a plaintiff may pursue a § 1983 claim based on allegations that a prosecutor fabricated evidence that implicated him in an unsolved crime. See Buckley, 509 U.S. at 274-75. On the other hand, the Supreme Court has indicated that a prosecutor enjoys absolute immunity for the preparation of charging documents such as a criminal information. See Kalina, 522 U.S. at 129, 130-31. Applying these precedents to the facts alleged by Hovatter, the doctrine of absolute immunity does not provide a basis for dismissing

Hovatter's § 1983 malicious prosecution claim in its entirety. Widdowson is not protected by absolute immunity to the extent that he sought out false witness testimony or directed Jacobs to manufacture evidence prior to Hovatter's arrest, or made statements to the press. (Compl. at ¶¶ 25-26, 45, 52.)

B. Scope of Claims

Because § 1983 is not "a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes," Hovatter's claim is only viable to the extent that it is based on a violation of a federal constitutional or statutory right. Lambert v. Williams, 223 F.3d 257, 260 (4th Cir. 2000) (quoting Baker v. McCollan, 443 U.S. 127, 144 (1979)). The Fourth Circuit has recognized § 1983 claims akin to false arrest / imprisonment and malicious prosecution, based on alleged violations of the plaintiff's Fourth Amendment rights. See Brooks v. City of Winston-Salem, N.C., 85 F.3d 178, 181-82, 183-84 (4th Cir. 1996); see also Lambert, 223 F.3d at 261-62. The majority of Hovatter's allegations–that officials made false and misleading statements to support a finding of probable cause for his arrest warrant, testified falsely and procured the false testimony of others, and pursued a prosecution despite the lack of probable cause–are akin to malicious prosecution. See Brooks, 85 F.3d at 182; see also Porterfield v. Lott, 156 F.3d 563, 568 (4th Cir. 1998). At least some of these allegations could establish a Fourth Amendment violation and thus state a claim under § 1983. See Brooks, 85 F.3d at 183-84; Freeland v. Childress, 177 F. Supp.2d 422, 430 (D. Md. 2001). This claim necessarily will be limited in scope, however, because the Fourth Amendment does not provide any further protections once a pretrial detainee has appeared before a neutral and detached magistrate for a probable cause determination. Brooks, 85 F.3d at 184. Hovatter had his initial appearance and

bail review hearing on May 2 and 3, 1994, and accordingly cannot establish any Fourth Amendment violation based on his continued detention after these dates.[4]

The remainder of Hovatter's allegations fail, because he cannot establish any federal constitutional or statutory violation. For purposes of §1983 liability, "a claim for false arrest may be considered only when no arrest warrant has been obtained." Porterfield, 156 F.3d at 568 (citing Brooks, 85 F.3d at 181-82). Hovatter agrees that he was arrested pursuant to a facially valid warrant issued by a neutral magistrate, thus barring any § 1983 claim on this basis. Cf. id. As to the state torts of intentional infliction of emotional distress, false light invasion of privacy, or conspiracy to commit these torts, there would be no violation of § 1983 because there are no federal constitutional or statutory rights at stake. See, e.g., Lynn v. O'Leary, 264 F. Supp. 2d 306, 310-11 (D. Md. 2003) (dismissing § 1983 invasion of privacy claim, noting that there is no general constitutional right to privacy).

Accordingly, Hovatter initially is limited to a § 1983 claim akin to malicious prosecution based on any alleged Fourth Amendment violations for the time period prior to May 2 and 3, 1994.

C. State Officials Acting in Their Official Capacity

The Supreme Court has held that neither a state nor state officials acting in their official capacity are "persons" within the meaning of § 1983. See Will v. Michigan Dep't of State Police, 491 U.S. 58,

---

[4] The complaint also cites the Fourteenth Amendment as a basis for Hovatter's § 1983 claim. "[T]he Fourth Amendment provides all of the pretrial process that is constitutionally due to a criminal defendant in order to detain him prior to trial." See Brooks, 85 F.3d at 184. The Fourteenth Amendment does not provide any further protection to Hovatter as to his pretrial detention. See id.; see also Albright v. Oliver, 510 U.S. 266, 270 n.4, 274-75 (1994) (per curiam).

71 (1989). Judges in this court have found that sheriffs and their deputies in Maryland are state officials, and thus not subject to suit under § 1983. See Rossignol v. Voorhaar, 321 F. Supp. 2d 642, 650-51 (D. Md. 2004); Kennedy v. Widdowson, 804 F. Supp. 737, 741-42 (D. Md. 1992); cf. Rucker v. Harford County, 558 A.2d 399, 402 (Md. 1989) (holding that sheriffs and their deputies are state employees as a matter of Maryland law). Accordingly, count two will be dismissed as to Nelms to the extent that he is being sued in his official capacity as Sheriff of Wicomico County.[5]

D. County Liability

Hovatter also names the Board of Commissioners of Wicomico County as a defendant on the § 1983 claim. Counties and other local government bodies may be liable under § 1983 based on the actions of individual defendants, but only if those defendants were executing an official policy or custom of the local government which resulted in a violation of the plaintiff's rights. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690-91 (1978); Love-Lane v. Martin, 355 F.3d 766, 782 (4th Cir. 2004).[6] A plaintiff may establish a government "custom" by showing that "a particular practice 'is so persistent and widespread and so permanent and well settled as to constitute a custom or usage with the force of

---

[5] Any official capacity claim against either Jacobs, a state trooper, or Widdowson, a state's attorney, would be barred for the same reason. Cf. Kennedy, 804 F. Supp. at 741. In his amended complaint, Hovatter makes clear that Jacobs and Widdowson are sued only in their individual capacities. I also note that the only allegation against Nelms involves a public statement that he made after Hovatter's acquittal in October 2000. (Compl. at ¶ 51.) Because this conduct does not implicate Hovatter's Fourth Amendment rights and Hovatter has not alleged any other basis for finding a violation of a federal constitutional or statutory right for this conduct, the § 1983 claim against Nelms in his individual capacity will be dismissed. Cf. Lynn, 264 F. Supp. 2d at 310-11.

[6] Of course, a local government body could be directly liable if it "was aware of the constitutional violation and either participated in, or otherwise condoned, it." Love-Lane, 355 F.3d at 782-83. Hovatter has not made any allegations that would establish direct liability.

law.'" Simms ex rel. Simms v. Hardesty, 303 F. Supp. 2d 656, 670 (D. Md. 2003) (quoting Carter v. Morris, 164 F.3d 215, 218 (4th Cir. 1999)). In addition to regulations or ordnances, a plaintiff may establish a local government policy by citing an action or omission made by an individual with "final authority to establish municipal policy with respect to the action ordered." Love-Lane, 355 F.3d at 782 (quoting Pembaur v. City of Cincinnatti, 475 U.S. 469, 481 (1986)); see also Carter, 164 F.3d at 218.

Hovatter has not made any allegations or submitted any evidence that would suggest that any of the surviving violations alleged in his § 1983 claim resulted from a municipal policy or custom of Wicomico County, or a decision or omission by an individual with final policymaking authority for the county. Accordingly, the § 1983 claim must be dismissed as to the Board of Commissioners for Wicomico County for failure to state a claim upon which relief can be granted.[7]

E. Statute of Limitations

The defendants also argue that all of Hovatter's § 1983 claims arose on the date of his arrest, May 2, 1994, and thus are untimely. Claims brought under § 1983 are subject to the general or residual statute of limitations applied to personal injury causes of action under governing state law. Owens v. Okure, 488 U.S. 235, 249-50 (1989). In this case, Hovatter's § 1983 claims are subject to a three-year statute of limitations, consistent with Maryland's general limitations period for personal injury actions. See Causey v. Balog, 162 F.3d 795, 804 (4th Cir. 1998); Knickman v. Prince

[7] I also note that the Board of Commissioners has not been served to date, although more than 120 days have passed since it was added by Hovatter's amended complaint on March 26, 2004. See Fed. R. Civ. P. 4(m).

George's County, 187 F. Supp. 2d 559, 563-64 (D. Md. 2002); Md. Code Ann., Cts. & Jud. Proc. § 5-101. Because Hovatter would need to establish that the underlying criminal charges against him were terminated in his favor in order to establish a Fourth Amendment violation akin to malicious prosecution, his claims did not arise until he was acquitted of the underlying criminal charges on October 26, 2000, and his October 15, 2003 complaint was timely. See Brooks, 85 F.3d at 183.[8]

II. State Claims

A. Eleventh Amendment Immunity

The Eleventh Amendment bars suits in federal court for monetary damages against a State or state officials acting in their official capacity. Ballenger v. Owens, 352 F.3d 842, 844-45 (4th Cir. 2003); Lewis v. Bd. of Ed., 262 F. Supp. 2d 608, 612 (D. Md 2003).[9] Sheriffs and their deputies are state officials under Maryland law, and thus are protected by Eleventh Amendment immunity when sued in their official capacities. See Rossignol, 321 F. Supp. 2d at 650; Gray v. Maryland, 228 F. Supp. 2d 628, 640 (D. Md. 2002); cf. Rucker, 558 A.2d at 402; Md. Code Ann., State Gov't § 12-101(a)(6). Accordingly, counts one and three through eight will be dismissed as to Nelms to the extent that he is being sued in his official capacity as Sheriff of Wicomico County.[10]

---

[8] The statute of limitations provides another basis for dismissing any claims by Hovatter that are akin to a false arrest or imprisonment claim, which would have accrued on the date of Hovatter's arrest. See Brooks, 85 F.3d at 182-83. As his complaint was not filed until October 15, 2003, more than nine years later, any such claim would be untimely.

[9] Although the state of Maryland has waived sovereign immunity for certain tort claims brought in state court, this waiver expressly reserves any sovereign immunity defenses available in federal court, including under the Eleventh Amendment. See Md. Code Ann., State Gov't § 12-103(2).

[10] Any official capacity claim against either Jacobs, a state trooper, or Widdowson, a state's attorney, would be barred for the same reason, but Hovatter is suing these defendants only in their

B. Statutory and Public Official Immunity

The defendants all claim that they are entitled to statutory immunity for the state law claims alleged in Hovatter's complaint.[11] Under Maryland statutory law, individual state government employees are immunized from tort liability for acts or omissions committed within the scope of their employment and made without actual malice or gross negligence. See Md. Code Ann., Cts. & Jud. Proc. § 5-399.2(b) (1994); see also Shoemaker v. Smith, 725 A.2d 549, 560 (Md. 1999) (stating that required showing of malice is "actual malice"). Maryland statutory law also immunizes local government employees from the execution of monetary judgments for tort claims based on acts or omissions committed within the scope of their employment and made without actual malice. See Md. Code Ann., Cts. & Jud. Proc. § 5-402(b) (1994). In contrast to state employee statutory immunity, however, this only bars the execution of a judgment but not the lawsuit itself. See, e.g., Ashton, 660

---

individual capacities. Eleventh Amendment immunity does not bar these claims or the individual capacity claims against Nelms. See Sales v. Grant, 224 F.3d 293, 297-98 (4th Cir. 2000); Lewis, 262 F. Supp. 2d at 612.

[11] The defendants also claim that they are entitled to common law public official immunity, but this form of immunity is not available for intentional and constitutional torts such as those alleged by Hovatter. See Okwa v. Harper, 757 A.2d 118, 140 (Md. 2000); DePino v. Davis, 729 A.2d 354, 370 (Md. 1999); Ashton v. Brown, 660 A.2d 447, 465-66, 470-71 (Md. 1995). The weight of authority from the Maryland courts, however, holds that state employees still qualify for statutory immunity for state constitutional and intentional torts. See Lee v. Cline, 814 A.2d 86, 102, 113 (Md. Ct. Spec. App. 2002), cert. granted 821 A.2d 370 (Md. 2003) (holding that statutory immunity for state employees applies to constitutional and intentional torts); Hines v. French, 852 A.2d 1047, 1061 (Md. Ct. Spec. App. 2004) (relying on Lee v. Cline for this point); Ford v. Baltimore City Sheriff's Office, 814 A.2d 127, 132 (Md. Ct. Spec. App. 2002) (same); Thomas v. City of Annapolis, 688 A.2d 448, 453 (Md. Ct. Spec. App. 1997) (noting that statutory immunity for state employees apparently applies to constitutional and intentional torts). The limited statutory immunity from judgments for local government employees also applies to intentional and constitutional torts. See Ashton, 660 A.2d at 464-66, 473-74.

A.2d at 464-66; Lee v. Cline, 814 A.2d 86, 108-09 (Md. Ct. Spec. App. 2002). "Actual malice" requires showing that an employee "intentionally performed an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff." Thacker v. City of Hyattsville, 762 A.2d 172, 189 (Md. Ct. Spec. App. 2000) (quoting Shoemaker, 725 A.2d at 560).

In this case, Hovatter has adequately alleged facts to survive a motion to dismiss on the malice factor as to defendants Widdowson and Jacobs. Hovatter alleges that Jacobs and Widdowson made intentionally false statements and procured false witness testimony to implicate Hovatter in the Payne murder, while ignoring evidence that exculpated Hovatter or implicated others. (Compl. at ¶¶ 25-31, 39-42, 45-48, 52.) Moreover, Widdowson allegedly joked with Hovatter's attorney during one of the trials that "he'd have [Plaintiff Hovatter] doing life on the installment plan." (Id. at ¶ 49.) These specific factual allegations, if proven, could permit a finding that Jacobs and Widdowson acted with actual malice. For this reason, Jacobs and Widdowson are not entitled to statutory immunity as a matter of law, and the claims against them can proceed at this point.

With regard to Nelms, however, Hovatter has failed to allege any specific facts that would support a finding of actual malice. Although the amended complaint repeatedly states that all of the defendants acted with malice towards Hovatter (id. at ¶¶ 57, 66-67, 69-70, 80), these bare legal conclusions are not binding on the court. See Young, 238 F.3d at 577. The only allegation concerning Nelms states that after Hovatter was acquitted Nelms "appeared on television (WBOC TV-16) and announced that Plaintiff Hovatter was a guilty man." (Compl. at ¶ 51.) These alleged facts, standing alone, would not be sufficient to permit a finding of actual malice.

There is no other basis in the record for denying immunity to Nelms on all of the state law claims.[12] For Nelms, this means that counts one and three through eight must be dismissed.

C. Required Notice Under the Local Government Tort Claims Act

Fisher, Matthews, and the Board of Commissioners of Wicomico County are entitled to dismissal based on Hovatter's failure to submit prior written notice of his claim to the county, as required under Maryland's Local Government Tort Claims Act ("LGTCA"). See Md. Code Ann., Cts. & Jud. Proc. § 5-404 (1994).[13] The notice requirements of the LGTCA apply to intentional and constitutional torts. Curtis v. Pracht, 202 F. Supp. 2d 406, 414 (D. Md. 2002); see also Ashton, 660 A.2d at 464-66, 473-74. The filing of the required notice is a condition precedent to the plaintiff's underlying action for damages, and should be alleged as a substantive element in the complaint in order to state a claim under Maryland law. Curtis, 202 F. Supp. 2d at 414.

Hovatter did not allege in his complaint or in any of his memoranda that he provided any prior notice of his state law tort claims against Fisher, Matthews, and the Board of Commissioners of Wicomico County, as required by the LGTCA. In response to a similar argument raised by the defendants regarding the notice requirements of the Maryland Tort Claims Act, Hovatter does not

---

[12] Although Nelms also would not be entitled to statutory immunity if he acted with gross negligence, Hovatter has failed to make any specific factual allegations that would support such a finding.

[13] The Act defines "local government" to include counties and boards of county commissioners. Md. Code Ann., Cts. & Jud. Proc. § 5-401(d)(1)-(3). The notice requirements cover tort claims against these entities and their employees. Id. § 5-404(a). Thus, in this case the LGTCA requirements apply to all state law claims for damages brought against Fisher and Matthews, who are identified as law enforcement officers employed by Wicomico County, and the Board of Commissioners for Wicomico County. The failure to provide proper notice also provides an alternative basis for dismissing all claims against the Board of Commissioners for Somerset County.

argue that he provided any prior notice of his claims to any of the defendants.(Pl.'s Mem. at 34; Pl.'s Reply at 12-13.) Accordingly, counts one and three through eight must be dismissed as to these three defendants.[14]

D. Malicious Prosecution

"The elements of malicious prosecution are: 1) a criminal proceeding instituted or continued by the defendant against the plaintiff; 2) without probable cause; 3) with malice, or with a motive other than to bring the offender to justice; and 4) termination of the proceedings in favor of the plaintiff." Heron v. Strader, 761 A.2d 56, 59 (Md. 2000). Hovatter's state claim for malicious prosecution did not arise until his acquittal on October 26, 2000, see id., making his October 15, 2003 complaint timely under Maryland's general three-year statute of limitations for tort claims. See Md. Code Ann., Cts. & Jud. Proc. § 5-101. Hovatter's complaint adequately alleges each of the elements of a malicious prosecution claim as to Widdowson and Jacobs, and the defendants have raised no other arguments in support of dismissal. While this tort claim may extend beyond his § 1983 and Article 26 claims because it is not limited by the scope of Hovatter's constitutional protections, it nonetheless will be

[14] The defendants also argue that all claims asserted by Hovatter are barred because of his failure to comply with the notice requirements of the Maryland Tort Claims Act ("MTCA"). While the lack of notice to the state would bar Hovatter's claim against the state or its agencies, it has no effect on his claims against any individual state employees. See Chinwuba v. Larsen, 790 A.2d 83, 100-01 (Md. Ct. Spec. App. 2002), rev'd in part on other grounds 832 A.2d 193 (Md. 2003) (noting that improper notice under the MTCA barred a claim against a state agency, but not against the agency's commissioner); cf. Simpson v. Moore, 592 A.2d 1090, 1097 (Md. 1991) (noting that failure to comply with the MTCA notice requirements bars a claim against the state, but does not affect the statutory immunity conferred on state employees); Lee, 814 A.2d at 104, 106-07 (noting that the MTCA abrogates the sovereign immunity of the state and its agencies but not its employees, who are not protected by sovereign immunity).

limited by Widdowson and Jacob's entitlement to absolute immunity for much of their conduct, as discussed above.

E. False Arrest and False Imprisonment

The elements of a claim for false arrest or false imprisonment are the same under Maryland law: (1) the defendant deprived the plaintiff of his liberty; (2) without consent; and (3) without legal justification. Heron, 761 A.2d at 59; Okwa v. Harper, 757 A.2d 118, 133 (Md. 2000). A claim for false arrest or false imprisonment arises on the date of arrest, see Heron, 761 A.2d at 59, and is subject to Maryland's general statute of limitations of three years for tort claims, see Md. Code Ann., Cts. & Jud. Proc. § 5-101. As stated, Hovatter was arrested on May 2, 1994, but did not file his claims for false arrest and false imprisonment until October 15, 2003. Accordingly, counts three and four will be dismissed as untimely against the remaining defendants, Widdowson and Jacobs.

F. Articles 24 and 26 of the Maryland Declaration of Rights

For the reasons stated above, the applicable statute of limitations bars Hovatter's claim under Articles 24 and 26 of the Declaration of Rights based on his theory of false arrest / imprisonment, which also is subject to the general three-year statute of limitations under § 5-101. Hovatter's claim under the Declaration of Rights based on a malicious prosecution theory did not arise until his acquittal on October 25, 2000, however, and thus is timely. Although this claim will be allowed to proceed, it will be limited to an Article 26 claim for events prior to May 2 and 3, 1994, consistent with the above analysis regarding absolute immunity and the scope of the Fourth and Fourteenth Amendments. See Gill v. Ripley, 724 A.2d 88, 96 (Md. 1999) (applying Supreme Court precedent under § 1983 to define the scope of absolute immunity for prosecutors under Maryland law); Korb v. Kowaleviocz, 402

A.2d 897, 899 (Md. 1979) (recognizing unconditional privilege under Maryland law for witness testimony in a judicial proceeding); Carter v. State, 788 A.2d 646, 652 (Md. 2002) (noting that Article 26 is interpreted in pari materia with interpretations of the Fourth Amendment as reflected in Supreme Court precedents); Pickett v. Sears, Roebuck & Co., 775 A.2d 1218, 1224 (Md. 2001) (same as to Article 24 and Fourteenth Amendment due process).

G. Invasion of Privacy False Light

The scope of Hovatter's invasion of privacy false light claim initially is limited by the applicable statute of limitations. Maryland applies the general three-year statute of limitations under § 5-101 to such claims. See Allen v. Bethlehem Steel, 547 A.2d 1105, 1108 (Md. Ct. Spec. App. 1988). Because Hovatter alleges that Widdowson made public comments about Hovatter's guilt following his acquittal on October 26, 2000 and Hovatter filed this complaint on October 15, 2003, the three-year statute of limitations alone does not bar his claim as to any such statements. Count six will be dismissed as to Jacobs, however, because Hovatter has not pointed to any statements by him within the allowable time frame.

Hovatter alleges that Widdowson made statements to the media after Hovatter's acquittal in October 2000 "claiming that he believed that Plaintiff Hovatter was guilty of murder." (Compl. at ¶ 52.) Elsewhere in the complaint Hovatter claims that Widdowson knew there was insufficient evidence and a lack of probable cause to implicate Hovatter in Payne's murder (id. at ¶ 48), and Widdowson clearly knew of Hovatter's acquittal on the Payne murder charges. The facts alleged state the elements of a claim for invasion of privacy false light: (1) that Hovatter was exposed to publicity in a false light before the public by Widdowson; (2) that a reasonable person would find the publicity highly offensive;

and (3) that Widdowson had knowledge of or acted in reckless disregard of the falsity of the publicized matter and the false light in which it placed Hovatter. See Holt v. Camus, 128 F. Supp. 2d 812, 816 (D. Md. 1999); Furman v. Sheppard, 744 A.2d 583, 587 (Md. Ct. Spec. App. 2000). Although the parties may dispute the falsity of any such statements by Widdowson, at this point the allegations are sufficient to survive a motion to dismiss.

H. Intentional Infliction of Emotional Distress

To state a claim for intentional infliction of emotional distress (IIED) under Maryland law, the plaintiff must allege four elements: (1) the alleged conduct must be intentional or reckless, (2) the conduct must be extreme and outrageous, (3) there must be a causal connection between the wrongful conduct and the emotional distress, and (4) the emotional distress must be severe. See Manikhi v. Mass Transit Admin., 758 A.2d 95, 113 (Md. 2000). The Maryland Court of Appeals has cautioned that liability for this tort "should be imposed sparingly." Caldor, Inc. v. Bowden, 625 A.2d 959, 963 (Md. 1993). In particular, the fourth element of severe emotional distress imposes a "high burden" on IIED claims, Manikhi, 758 A.2d at 114, requiring the plaintiff to have suffered "a severely disabling emotional response," Harris, 380 A.2d at 616, "so acute that no reasonable man could be expected to endure it." Caldor, 625 A.2d at 964 (internal quotations omitted). The Maryland courts generally require a plaintiff to plead specific facts regarding the nature, intensity, and duration of the alleged emotional distress. See Manikhi, 758 A.2d at 115.

Hovatter alleges that he "has suffered and will continue to suffer severe and extreme emotional distress." (Compl. at ¶ 81.) The complaint contains no other allegations on this point. Hovatter's conclusory claim is too generalized to state the kind of "severely disabling emotional response" required

by the Maryland courts. Harris, 380 A.2d at 616, 617; see also, e.g., Farasat, 32 F. Supp. 2d at 248 (dismissing claim where plaintiff alleged conclusorily that he suffered "severe emotional distress" and "mental anguish"); Tavakoli-Nouri, 779 A.2d at 999-1000 (affirming dismissal where plaintiff alleged in general terms that he experienced embarrassment, humiliation, shame, and "emotional distress and anguish"). Count seven will be dismissed for failure to state a claim upon which relief can be granted.

H. Civil Conspiracy

Under Maryland law, civil conspiracy is not a separate tort, but rather serves to extend liability to co-conspirators once the plaintiff has established some other tortious wrong. See, e.g., Hoffman v. Stamper, 843 A.2d 153, 178-79 (Md. Ct. Spec. App. 2004); Hejirika v. Maryland Div. of Corr., 264 F. Supp. 2d 341, 346-47 (D. Md. 2003). Although I will dismiss the separate count for civil conspiracy, Hovatter nonetheless may raise this argument under his surviving state law claims for malicious prosecution and violation of his rights under Article 26 against Widdowson and Jacobs.

III.

In sum, all claims against defendants Nelms, John Doe, and the Boards of Commissioners of Wicomico and Somerset Counties will be dismissed. All state law claims against defendants Fisher and Matthews also will be dismissed. Finally, the claims for false arrest, false imprisonment, intentional infliction of emotional distress, and civil conspiracy will be dismissed as to Widdowson and Jacobs, and the claim for invasion of privacy false light will be dismissed as to Jacobs.

Hovatter may proceed on his § 1983 federal claim and Article 26 state claim as to defendants Widdowson, Jacobs, Fisher, and Matthews, based on a theory of malicious prosecution and limited to the period prior to May 2 and 3, 1994. Hovatter also may pursue a state law malicious prosecution

claim against defendants Widdowson and Jacobs, subject to the constraints of absolute immunity for prosecutors and testifying witnesses identified above. Hovatter also may proceed on his claim for invasion of privacy false light as to statements made by Widdowson after October 15, 2000.

A separate order follows.

September 15, 2004
Date

/s/
Catherine C. Blake
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WALTER JAMES HOVATTER	:	
	:	
v.	:	Civil No. CCB-03-2904
	:	
LOGAN WIDDOWSON, et al.	:	
	:	

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby Ordered that:

1. defendants Widdowson and Jacobs's motions to dismiss (docket nos. 10 and 29) are **GRANTED in part and DENIED in part**;

2. defendants Nelms, Fisher, and Matthews's motions to dismiss (docket nos. 21 and 30) are **GRANTED in part and DENIED in part**;

3. defendant Handy's motion to dismiss (docket no. 13) is **GRANTED**;

4. plaintiff's "Motion of Concern" (docket no. 8) is **DENIED**;

5. all counts will be **DISMISSED** against defendants John Doe, the Board of Commissioners of Somerset County, the Board of Commissioners of Wicomico County, and Hunter Nelms;

6. counts one and three through eight will be **DISMISSED** against defendants Martin Fisher and Stephen Matthews;

7. counts three, six, seven and eight will be **DISMISSED** against George Jacobs;

8. counts three, seven, and eight will be **DISMISSED** against Logan Widdowson; and

9. copies of this Order and the accompanying Memorandum shall be sent to counsel of record.

September 15, 2004
Date

/s/
Catherine C. Blake
United States District Judge